

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JOHN ROBERT DEMOS,

Cause No. CV 09-169-BLG-RFC-CSO

Petitioner,

vs.

FINDINGS AND
RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

MONTANA DEPARTMENT OF
CORRECTIONS,

Respondent.

This matter is before the Court on a petition for writ of habeas corpus filed by Petitioner Demos, a Washington state prisoner proceeding pro se, pursuant to 28 U.S.C. § 2254. Demos did not pay the \$5.00 filing fee or move to proceed in forma pauperis, but there is no need to delay resolution of this action on that basis.

28 U.S.C. § 2241(a) authorizes the federal district courts to grant writs of habeas corpus “within their respective jurisdictions.” Demos asserts that “Montana is nothing more than a token for the State of

Washington.” Pet. (doc. 1) at 1. Montana, however, has not convicted Demos of any crime. This Court plainly lacks jurisdiction over the petition. The action should be dismissed.

Transfer to cure want of jurisdiction would not be in the interest of justice. 28 U.S.C. § 1631. Demos has filed many meritless actions in this Court. He has filed more than 530 actions in other federal district courts. U.S. Party/Case Index, <http://pacer.uspci.uscourts.gov> (Dec. 31, 2009).

Additionally, because jurisdiction is plainly lacking, any appeal from the District Court’s disposition would be taken in bad faith. For the same reason, a certificate of appealability is not warranted.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. The Petition (doc. 1) should be DISMISSED.
2. A certificate of appealability should be DENIED.
3. The District Court should CERTIFY that any appeal from its disposition would be taken in bad faith, pursuant to Fed. R. App. P. 24(a)(4)(B).
4. The District Court should direct the Clerk to enter a judgment of

dismissal.

NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to this Findings and Recommendations within fourteen (14) calendar days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

Petitioner must immediately file a “Notice of Change of Address” if his mailing address changes while this action remains pending in this Court. Failure to do so may result in dismissal of his case without notice to him.

DATED this 5th day of January, 2010.

/s/ Carolyn S. Ostby
United States Magistrate Judge